Public Prosecutor) for the appellant.

W.P. Leong for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): The learned judge in this case did not sentence the appellant to death on conviction but imposed a term of imprisonment for life with whipping of 10 strokes. The Public Prosecutor appeals against the sentence and submits that the sentence of death should be imposed in consonance with the earlier decisions of this court on the question of sentence for trafficking in dangerous drugs.

The respondent was charged and convicted for trafficking in some 736.5 grammes of heroin, a sizeable quantity particularly if it is borne in mind that the presumption of trafficking under section 37(da) of the Dangerous Drugs Act, 1952 arises in the case of possession of 100 grammes of the drug. We have made clear the position with regard to sentencing on conviction for trafficking in dangerous drugs. We have said, and we say again, that the sentence of death should be imposed for trafficking in dangerous drugs other than in the most exceptional circumstances. We trust that it will not be necessary to repeat in the future our observations in this matter in *Loh Hock Seng & Anor.* v. *Public Prosecutor*[1]; *Public Prosecutor* v. *Oo Leng Swee & Ors.*[2] and *Chang Liang Sang & Ors.* v. *Public Prosecutor*[3] in perhaps even more trenchant terms or at all.

We have been referred to the case of Beatrice Saubin, a twenty-two year old French girl who was convicted for trafficking in heroin and sentenced to death by the High Court which on appeal to this court was altered to imprisonment for life on the grounds that there were extenuating circumstances in that case. As no reasons have been given, either oral or written, in that case we do not know what the extenuating circumstances found were and we can therefore only consider that case as one on its own particular facts and circumstances. We would however make it absolutely clear that a twenty-two year old foreign female courier who trafficks in heroin takes the same risk and does so at the same peril as a fifty-two year old local male counterpart, and the sex, age and origin of the offender would appropriately be more a matter for consideration in any application for clemency to the appropriate authority under Article 42 of the Federal Constitution.

In the case before us the respondent was convicted for trafficking in a large amount of heroin for a monetary motive and out of sheer greed. We find no extenuating circumstances that would justify a classification of this case as most exceptional and we therefore find no justification for the sentence of life imprisonment imposed.

We accordingly allow the appeal by the Public Prosecutor against the sentence, set aside the imposition of the term of imprisonment for life and the order for whipping and sentence the respondent to death.

Order accordingly.

Solicitors: *W.P. Leong & Partners.*

SYARIKAT SERI BERLIAN SDN. BHD. v. PIANG HONG YON & ORS.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Yusoff Mohamed J.) March 7 & November 6, 1982]

[Johore Bahru – Federal Court Civil Appeals Nos. 71/80 and 140-144/80]

Practice & Procedure – Appeal to Yang di-Pertuan Agong – Application for enlargement of time for appeal – No adequate reason for delay – Rules of the Federal Court, 1980, r. 154 – Courts of Judicature Act, 1964, s. 75.

In this case the appellants applied for conditional leave to appeal to the Yang di-Pertuan Agong. They applied for enlargement of time under rule 154 of the Federal Court Rules, 1980. It was alleged that the delay was caused by difficulty in getting a director to swear an affidavit.

Held: the reason given for the delay was a most inadequate one and the application for extension of time must be refused.

Cases referred to:

(1) *Re L.Y. Swee & Co. Ltd., Khoo Leong Kee* v. *L.Y. Swee & Co. Ltd.* [1968] 2 M.L.J. 104.

(2) *Ratnam* v. *Cumasamany & Anor.* [1965] 1 M.L.J. 228.

FEDERAL COURT.

Thara Singh Sidhu for the applicants.

Humphrey Ball for first six respondents.

Edgar Joseph Jr. for the 7th repondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): This is an application for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the order of this court dated December 5, 1981, and for a further order that

execution of the judgments appealed from be stayed pending appeal.

Mr. Thara Singh Sidhu for the applicants referring to the affidavit of Abdul Aziz b. Daud, a Director of the applicant company says that he is only 6 days outside the time limit of 6 weeks prescribed by section 75 of the Courts of Judicature Act, the application having been filed on January 23, 1982. Counsel added that the respondents would not be prejudiced in any way, and that this is an appropriate occasion for the court to exercise its discretion and allow enlargement of time under rule 154 of the Federal Court Rules. The delay was caused, he said by difficulty in getting a director to swear an affidavit. Special circumstances need not, he submits, be shown in an application such as this.

Mr. Edgar Joseph for Respondent 7 (whose arguments Mr. Humphrey Ball acting for the other 6 respondents adopts and supports) however says that the delay is not 6 days but 34 days. Whilst the 1st application was dated January 22, 1982 (one week late) it merely moved the court for conditional leave to appeal and contained no prayer for extension of time, it was only in the second application dated February 19, 1982, 34 days after the judgment of this court, that such a prayer was first made.

Mr. Joseph also pointed out that it would appear from Mr. Sidhu's affidavit that he was acting at the request of only one of several directors of the company and adds that a resolution of the company would be necessary if Mr. Sidhu is to be regarded as having authority to act for it. To this Mr. Sidhu's reply is that he had from the very start acted as solicitor for the applicants.

Mr. Joseph refers to a passage in *Re L.Y. Swee & Co. Ltd.; Khoo Leong Kee* v. *L.Y. Swee & Co. Ltd.*[1] in support of his proposition that authority to act on its behalf requires the resolution of the company.

The facts there are different. We are satisfied that, as the records show, Mr. Sidhu had, as he claimed, been solicitor for the applicants from the very start.

We were also referred to a passage in *Ratnam* v. *Cumarasamy & Anor.*[2], a decision of the Privy Council which lays guidelines for the exercise of our discretion –

> "The Rules of Court must *prima facie* be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation."

There was a delay, not of 6 days as Mr. Sidhu claims, but of 34 days. Not being able to find the directors of the company, the reason given for the delay, is to say the least, a most inadequate one, something which in our considered view does not behove us to grant an extension of time.

The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Thara Singh Sidhu & Co.; Sault & Co.*

UNITED MALAYAN BANKING CORPORATION BHD. v. DEVELOPMENT AND COMMERCIAL BANK (LTD.) BHD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Abdul Hamid F.JJ.) March 10 & November 10, 1982]

[Johore Bahru – Federal Court Civil Appeal No. 33 of 1981]

Land Law – Private Caveat – Application to set aside private caveat – Whether applicants are aggrieved body – Whether caveators have caveatable interest – Onus of proof – National Land Code, ss. 256, 259(3), 322(2), 323 & 327.

In this case the registered proprietors of the piece of land were the MPC Holdings Sdn. Bhd. The respondents as from March 20, 1979 were the registered chargees on a charge to secure the recovery of a loan of $35 million granted by the respondents to MPC Holdings. The appellants had entered a private caveat on the register document of title of the land on May 21, 1979. The respondents applied to set aside the private caveat. The learned trial judge being satisfied that there had been an offer for the purchase of the land added that assuming the respondents agreed that the price offered was fair and were willing to close the deal the caveat would prevent registration of the certificate of sale on the register document of title. That, he held, was sufficient to make the respondents an aggrieved body. The learned trial judge also held that the appellants did not have a caveatable interest in the land. Although the registered proprietors had given an undertaking to give the appellants a second charge they were unable to honour the undertaking as the other creditors had refused to give their consent. Hence he held the restructuring of the loan facilities, if it took effect, was not related to the land nor was the said land purchased with a loan advanced by the appellants or any of their subsidiaries. The appellant appealed.